BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2018

CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)Nos.22573 of 2017 and 1514 of 2018
and
W.M.P(MD)Nos.1597, 1598 and 4667 of 2018

Orders reserved on	Orders pronounced on
13.03.2018	18.04.2018

W.P(MD)No.22573 of 2017:
Indian Bank, Tanjore Jn Branch,
Ground Floor, 1087, Mission Street,
Thanjavur - 613 001, rep. by its
Branch Manager/Authorized Officer. .. Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Thanjavur District.

2.The Revenue Divisional Officer,
Office of the RDO, Thanjavur District,
Thanjavur.

3.The Tahsildar,
Office of the Tahsildar,
Thanjavur Taluk,
Thanjavur District.

4.G.Anusya,
Proprietrix of M/s.MVK Nursing Home,
No.2721, South Rampart,
Opp. to Thilahar Thidal,
Thanjavur - 613 001.
[Fourth respondent is impleaded vide order dated
02.03.2018 made in W.M.P(MD)No.1011 of 2018]. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to take action based on the first respondent order in R.C.No.15486/2017/C1, dated 22.06.2017 and the consequential order of the second respondent order in R.C.No.4306/2017/A3, dated 28.06.2017 within the time stipulated by this Court.

For Petitioner : Mr.P.V.Muralidar

For Respondents 1 to 3 : Mr.D.Muruganandam,
Additional Government Pleader.

For Respondent No.4 : Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates.

W.P(MD)No.1514 of 2018:

G.Anusya,
Proprietrix of M/s.MVK Nursing Home,
No.2721, South Rampart,
Opp. To Thilahar Thidal,
Thanjavur - 613 001. .. Petitioner

Vs.

1.The District Collector,
Thanjavur District.

2.The Authorized Officer,
Indian Bank, Thanjavur Junction Branch,
Ground Floor, 1087, Mission Street,
Thanjavur - 613 007.

3.The Revenue Divisional Officer,
Thanjavur, Thanjavur District.

4.The Tahsildar,
Thanjavur Taluk,
Thanjavur.

5.The Authorised Officer,
City Union Bank Limited,
Banking incorporated under the
Companies Act, 1956, having its
Registered Office at 149, TSR Big Street,
Kumbakonam, Tamil Nadu - 612 001
and having one of the Branch Office
at No.1658, South Main Street,
Thanjavur - 613 009, rep. by its
Authorised Officer.
[Fifth respondent is impleaded vide
order dated 20.02.2018 made in
W.M.P(MD)No.3752 of 2018]

6.Dr.T.Elangovan,
Chairman,
M/s.Abi & Abi Hospital,

No.80, Abi & Abi Towers,
Opp. To Medical College Road,

Thanjavur - 613 004.
[Sixth respondent is impleaded vide order dated 02.03.2018 made in W.M.P(MD)No.3594 of 2018] .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order made by the first respondent in his proceedings in R.C.No.15486/2017/C1, dated 22.06.2017 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondents 1 ,3 and 4 : Mr.D.Muruganandam, Additional Government Pleader.

For Respondent No.2 : Mr.P.V.Muralidar

For Respondent No.5 : Mr.S.Sethuraman

For Respondent No.6 : Mr.Navven Kumar Murthi

COMMON ORDER

T.S.SIVAGNANAM,J.

Since both the writ petitions pertain to the same subject matter, namely, an auction sale conducted by the Indian Bank in respect of a property owned by Tmt.G.Anusya, the writ petitions were heard together and are disposed of by this common order.

2.The petitioner in W.P(MD)No.22573 of 2017 is M/s.Indian Bank, Thanjavur Junction Branch and the petitioner in W.P(MD)No.1514 of 2018 is Tmt.G.Anusya. The sixth respondent in W.P(MD)No.1514 of 2018 is the auction purchaser of the property brought for auction by the Indian Bank. The said auction purchaser has availed a loan from the City Union Bank Limited, Kumbakonam, which has been impleaded as the fifth respondent in W.P(MD)No.1514 of 2018. The other respondents in both the cases are the officials of the State Government, namely, District Collector, Thanjavur District, Revenue Divisional Officer, Thanjavur District and Tahsildar, Thanjvur Taluk. In this common order, the parties shall be referred to as the secured creditor, the borrower and auction purchaser.

3.The secured creditor has filed W.P(MD)No.22573 of 2017 to direct the District Collector, Thanjavur District, to implement his order, dated 22.06.2017 and the Revenue Divisional Officer, Thanjavur District, to implement his order, dated 28.06.2017, which is consequent to the order passed by the District Collector, Thanjavur District. The orders passed by the District Collector is under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as 'SARFAESI Act'], extending assistance to the secured creditor to take possession of the property, which was sold in public auction and purchased by the auction purchaser.

4.The borrower, Tmt.G.Anusya, has filed W.P(MD)No.1514 of 2018, challenging the order passed by the District Collector, dated 22.06.2017 in exercise of his power under Section 14 of the SARFAESI Act and nominating the Revenue Divisional Officer, to take possession of the property immediately and hand over the same to the secured creditor.

5.Mr.M.Mahaboob Athiff, learned counsel appearing for the borrower, while assailing the correctness of the order passed by the District Collector, submitted that the secured creditor had violated Section 13(3A) of the amended SARFAESI Act, vide amendment made in 2004 and this defect is a cause to the root of the matter, vitiating the entire proceedings. Further, the learned counsel submitted that the property, which was sold in public auction, was grossly undervalued and in utter disregard and sold to the auction purchaser, who was the single bidder, in violation of law laid down by this Court in several decisions. Further, it is submitted that the District Collector has no jurisdiction to invoke his power under Section 14 of the Act after the sale was completed.

6.The learned counsel referred to the typed set of documents, earlier orders passed by the Court and the interim direction issued by this Court in W.P(MD)No.1514 of 2018 and submitted that the proceedings of the District Collector, deserve to be set aside.

7.The learned counsel appearing for the secured creditor submitted that the borrower had challenged the measures initiated by the secured creditor under the provisions of the SARFAESI Act, by approaching the Tribunal and the challenge to the proceedings has ended against the borrower, as the appeal filed before the Debts Recovery Appellate Tribunal was dismissed.

8.It is further submitted that the property was brought for auction after strictly following the procedures under the Act and it has been sold for the best price and inspite of the sale having been confirmed in favour of the auction purchaser and sale certificate issued on 24.03.2017 and registered before the concerned Sub Registrar, till date the secured creditor is unable to hand over actual physical possession of the property to the auction purchaser and therefore, they have been compelled to approach this Court and filed the writ petition.

9.Further, it is submitted that the borrower had approached various forums and filed several cases against the secured creditor, which all ended against her and the present attempt of the borrower, should not be permitted and the bank should be allowed to take over actual physical possession of the property and hand over the same to the auction purchaser.

10.Mr.Navven Kumar Murthi, learned counsel appearing for the auction purchaser, submitted that his client has purchased only one item of the properties, which were mortgaged by the borrower in favour of the secured creditor and the price offered by the auction purchaser is the proper market value of the property and the bank had followed the required procedure, while conducting the auction and inspite of having paid Rs.5,93,10,000/- [Five crores ninety three lakhs and ten thousand only], till date the auction purchaser is unable to get physical possession of the property.

11.Mr.S.Sethuraman, learned counsel appearing for City Union Bank Limited, Kumbakonam, who has financed the auction purchaser for purchase of the property, submitted that the actual physical possession of the property has to be handed over to the auction purchaser, so that the same can be secured in favour of the City Union Bank, who has advanced moneys to the auction purchaser.

12.Mr.D.Muruganandam, learned Additional Government Pleader, appearing for the official respondents submitted that already an attempt was made to take possession on 19.07.2017 and there may be some hindrances, which prevented the officials from discharging their duty and there were unpleasant happenings and therefore notice was issued to the borrower, fixing a date on which the officials proposed to take over possession so that if there are any patients in the hospital, they can be either discharged or accommodated elsewhere.

13.The learned counsel appearing for the auction purchaser submitted that his client has purchased only a clinic building and there can be no difficulty for the officials to take over possession of the property, which is an independent property and it is one of the several properties, which were offered by the borrower to secure various financial facilities availed by her, by then.

14.We have heard the learned counsels appearing for the parties and carefully perused the materials placed on record.

15.On a careful perusal of the factual position, we have no hesitation to hold that the present attempt of the borrower appears to be a feeble attempt to stall lawful procedures. Facts show that the borrower had availed as many as ten loans/finance facilities from the secured creditor. As they failed in repaying the loan accounts, they were classified as Non Performing Assets [NPA] and notices under Section 13(2) of the Act, were issued on 13.06.2015 and 19.06.2015. The borrower did not comply with the demand made and consequently symbolic possession of the properties were taken pursuant to notice dated 06.05.2016. Even thereafter, it appears that no effective steps were taken by the borrower to liquidate the dues. The secured creditor issued sale notice dated 01.08.2016, bringing the mortgaged properties for sale by e-auction on 07.09.2016, to realise the total dues of Rs.10,46,24,389/- [Rupees ten crores forty six lakhs twenty four thousand three hundred and eighty nine only] along with further interest and other charges. The borrower [M/s.MVK Nursing Home] challenged the said sale notice by filing an appeal before the Debts Recovery Tribunal III, Chennai, in S.A.No.426 of 2016. This was dismissed by the Tribunal, by order, dated 09.12.2016.

16.It is stated by the secured creditor that after the dismissal of the second appeal, the borrower agreed to settle the entire dues, but failed to adhere to their undertaking and since the dues were mounting, the secured creditor issued a fresh sale notice, dated 10.02.2017, for sale of the mortgaged properties through e-auction on 15.03.2017. The auction purchaser participated in the e-auction and was declared as a 'successful bidder' in respect of one item of the properties, which were put up for sale. Thus, it is the contention of the secured creditor that the borrower looses her right of redemption of the mortgaged property after the issuance of the sale notice. Once again, the borrower filed an appeal before the Debts Recovery Tribunal III, Chennai, challenging the sale notice dated 10.02.2017, in which, an interim order was granted subject to the condition that the borrower pays a sum of Rs.50,00,000/- [Rupees fifty lakhs only] on 14.03.2017 and a further sum of Rs.1,00,00,000/- [Rupees one crore only] on or before 28.03.2017.

17.The first condition imposed was not complied with. Therefore, in terms of the liberty granted by the Tribunal e-auction was conducted on 15.03.2017 and one of the mortgaged properties was sold in favour of the auction purchaser for a sum of Rs.5,93,10,000/- [Rupees five crores ninety three lakhs and ten thousand only]. The auction purchaser has remitted the entire sale consideration which has been appropriated to the loan amount and sale certificate dated 24.03.2017 was issued and duly registered.

18.When the case came up before the Tribunal on 30.03.2017, the Tribunal did not extend the order of *status quo*. Therefore, the borrower filed a civil revision petition before the Principal Bench of this Court in C.R.P.No.1670 of 2017, which came to be disposed of. Parallelly, the borrower filed an appeal before the Debts Recovery Appellate Tribunal, Chennai, which was dismissed as withdrawn.

19.The borrower once again approached this Court and filed W.P(MD)No.14098 of 2017, challenging an order passed by the Debts Recovery Tribunal in R.A.Sr.No.5192 of 2017 in S.A.No.90 of 2017 on the ground that it is not in confirmity with Section 17(2) of the SARFAESI Act and for consequential direction to the Tribunal to adjudicate the measures including the undervaluation and the alleged violation of the interim order by the bank. The writ petition was dismissed by the Division Bench, by order, dated 10.11.2017. While doing so, the Court noted the conduct of the borrower in not complying with any of the conditional orders. Considering the factual situation, if any indulgence is granted to the borrower at this juncture, it would not be legally tenable and if any relief is granted to the borrower in the writ petition filed by her, it would amount to setting at naught the earlier orders passed by the Division Bench and indirectly attempting to set aside the order passed by the Tribunal in two of the appeals filed by the borrower. Thus, no relief can be granted to the borrower in the writ petition filed by her.

20.The learned counsel appearing for the borrower submitted that after the sale has been concluded, the District Collector cannot exercise jurisdiction under Section 14 of the Act. We do not agree with the submission of the learned counsel appearing for the borrower, as we are supported by a decision of the *Hon'ble Division Bench* in the case of *M/s.Kathikkal Tea Planatations, rep. by its Managing Director v. State Bank of India rep. by its Chief Manager and Others* reported in *CDJ 2009 MHC 3299*. The core issue involved in the said writ petition was whether the respondent bank can take possession of the secured assets after issuing sale certificates in respect of auction purchases. The Hon'ble Division Bench took note of the decision of the *Hon'ble Supreme Court* in *Transcore v. Union of India* reported in *2008 I SCC 125* and the operative portion of the order reads as follows:

> *"16.From the above, the submission made by the learned counsel for the respondents that section 14 of the Act cannot be read in isolation and has to be viewed in the context of all other provisions of the Act, such as Sections 13(4)(6)(8), 15, 17, 18 Rule 8(9) of SARFAESI Rules and section 55 of the Transfer of Property Act is acceptable. These provisions are in conjunction with Section 14 of the Act for the purpose of interpretation, to be adopted, to achieve and sub-serve the object of the SARFAESI Act. Any other approach or interpretation will defeat the object of the Act. The object of the Act is only to enable the secured creditor, financial institutions to realise the long term assets, manage problems of liquidity, asset liability mis-match and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction. Therefore, it could be understood that the Act was brought for recovering the amount in speedy manner in taking possession of the properties and in realising the money. The third party, who comes forward to purchase the secured asset, must have a confidence that he would get the title to the property at the earliest. If the transferring of the property by way of title is going to be delayed endlessly, then the object of the Act which is meant for speedy recovery, would be defeated in whole. Therefore, as contended by the learned counsel for the banks, that if interpretation is given by taking the words in isolation from section 14, it would defeat the whole object. ... ...*

... ...

20. ... ... Here, when the object is to speedy recovery of debt, by way of taking possession on transferring the property in favour of third party and issued a sale certificate, it cannot be contended that once the sale certificate is issued, physical possession cannot be taken by the secured creditors. ... ...

21.Therefore, in our opinion, in the absence of any specific stipulation in Section 13, the properties could be sold only after taking physical possession and also the combined reading of section 13 and 14 with the background of the object would show that it cannot be said that the secured creditor cannot take actual physical possession after issuing sale certificates merely for the reason that the language found in section 14 refers to the secured creditor and secured asset. Further more, as contended by the learned counsel for the petitioner in W.P.No.10228 of 2009, that under section 13(10) even after sale, the bank can approach the Debts recovery Tribunal by filing application having jurisdiction or a competent court, for recovery of the balance amount. Further, the contention of the learned counsel for the banks that the character of the secured creditor cannot be said to be ceased by executing the sale certificate also cannot be ignored.

22.In view of the above discussions, we hereby hold that the respondents banks are entitled to take possession under section 14(2) of the SARFAESI Act and the issuance of sale certificate is not a bar to take physical possession and the writ petitioners are not entitled for the reliefs sought for".

The above decision is a straight answer to the contention raised by the learned counsel appearing for the borrower and consequently we hold that there is no bar to take physical possession of the property after the issuance of sale certificate. Thus, for the above reasons, we find no ground to entertain the writ petition filed by the borrower. Consequently, necessary directions have to be issued in the writ petition filed by the secured creditor/Indian Bank.

21.In the result,

(i)W.P(MD)N.22573 of 2017 is disposed of, by directing the District Collector, Thanjavur District and the Revenue Divisional Officer, Thanjavur District to issue fresh notice to the borrower, Tmt.G.Anusya, Proprietrix of M/s.MVK Nursing Home, No.2721, South Rampart, Opp. To Thilahar Thidal, Thanjavur - 613 001, giving them ten days time to keep the premises fully vacant and on the date fixed by the District Collector, Thanjavur, the authorities shall take over actual physical possession of the property and hand over the same to the secured creditor viz., M/s.Indian Bank, Thanjavur Junction Branch. If there is any difficulty for the District Collector, Thanjavur and his officials to implement his order passed under Section 14 of the SARFAESI Act, they are permitted to take the assistance of the police, for which, a letter may be addressed to the Superintendent of Police, Thanjavur District, who shall immediately issue necessary direction to his subordinate officers to provide adequate police protection. The opportunity of ten days to the borrower is granted, since an allegation was raised that the property is a hospital and there are patients. This allegation has been emphatically denied by the learned counsel appearing for the auction purchaser and submitted that his client has purchased only a clinic building and there are no inpatients in the said building. However, we do not propose to go into the controversy, but within the ten days period, the borrower shall keep the premises vacant or otherwise precipitate action has to be initiated by the District Collector, Thanjavur and his officials with police assistance. No costs.

(ii)W.P(MD)No.1514 of 2018 is dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1.The District Collector,
Office of the District Collector,
Thanjavur District.

2.The Revenue Divisional Officer,
Office of the RDO, Thanjavur District,
Thanjavur.

3.The Tahsildar,
Office of the Tahsildar,
Thanjavur Taluk,
Thanjavur District.

+5cc to Mr.P.V.MURALIDHAR, Advocate, SR.No. 61994
+2cc to Mr.V.KARTHIKEYAN, Advocate, SR.No. 61966
+1cc to Mr.MAHABOOB ATHIFF, Advocate, SR.No.62241

W.P(MD)Nos.22573 of 2017 and 1514 of 2018
and
W.M.P(MD)Nos.1597, 1598 and 4667 of 2018

18.04.2018

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KK/SV MMS/19.04.2018/SAR-3/9P-12C